

STATE OF MICHIGAN
COURT OF APPEALS

ANDREA ANN SCHMIDT,

Plaintiff-Appellant/Cross-Appellee,

v

ERIC J. HARRIS, an individual d/b/a ERIC J.
HARRIS RENTALS,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

August 2, 2002

No. 231750

St. Clair Circuit Court

LC No. 99-000572-NI

Before: Fitzgerald, P.J., and Holbrook, Jr. and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right the judgment of no cause of action entered following a jury trial in this negligence action. Defendant has filed a conditional cross appeal. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleged in her complaint that defendant was negligent in failing to warn her about a missing railing on the porch of a building owned by defendant and leased to plaintiff. Plaintiff further alleged that defendant was negligent in failing to maintain the porch railing and in failing to inspect and discover an unreasonably dangerous condition caused by the absence of such a railing. Plaintiff claimed that as a consequence of defendant's negligence, she fell off the porch in September 1998 and sustained serious injuries. Following a trial in St. Clair Circuit Court, the jury returned a verdict in favor of defendant and the trial court thereafter entered a judgment of no cause of action. Plaintiff now appeals and defendant cross appeals.

Plaintiff raises two evidentiary issues on appeal, claiming that the trial court abused its discretion in excluding certain documents, including a 1996 inspection report concerning the premises in question and defendant's tax returns and profit and loss statements relating to his rental properties. This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001); *Powell v St. John Hosp*, 241 Mich App 64, 72; 614 NW2d 666 (2000). "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected" MRE 103. "An error in the admission or exclusion of evidence is ground for granting a new trial if refusal to take this action appears inconsistent with substantial justice." *Merrow v Bofferding*, 458 Mich 617, 634; 581 NW2d 696 (1998), citing MCR 2.613(A). See also *Miller v Hensley*, 244 Mich App 528, 531; 624 NW2d 582 (2001).

First, plaintiff claims that the trial court abused its discretion by excluding a 1996 inspection report produced by the city of Port Huron, which reported the findings of an inspection of the apartment building where plaintiff's accident occurred. However, as defendant accurately notes and a review of the trial transcript reveals, the document in question was in fact admitted into evidence on the second day of trial at plaintiff's request and by defendant's stipulation. Plaintiff's argument in this regard is therefore without merit.

Next, plaintiff claims that the trial court abused its discretion when it held that defendant was not required to produce his income tax returns and profit and loss documents relating to his rental properties. Plaintiff argued that the documents were relevant to show whether or not defendant was taking deductions for repairs to the apartment house, thereby indicating if defendant actually spent any money maintaining the property and fulfilled his duty to make repairs and keep the premises reasonably safe for invitees. However, the trial court excluded these documents from consideration by the jury, noting that

Well, either he has or he hasn't been or done what is required of him under the law. Whether his financial ventures do it or not do it wouldn't excuse him from that responsibility. There may be some remote relevance, however there is also the potential that such documents could be used to simply invite a jury to assume there's a great deal of money that they should feel free to subtract a sum from his profits in order to compensate a person injured on the premises. That obviously would be an improper use of those documents. But it would be difficult to prevent that misuse from occurring. So balancing those two situations, I think they're not relevant and should be excluded. Also due to the fact there was a close of discovery, there should have been an exchange of documents long prior to the date prior to trial.

We are not persuaded that the trial court erred in excluding the tax returns and profit and loss documents regarding defendant's rental properties. Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by other considerations. MRE 403; *Tobin v Providence Hosp*, 244 Mich App 626, 637-638; 624 NW2d 548 (2001). The trial court's decision to not require defendant to produce the documents, which plaintiff failed to request until the day before trial and well after the close of discovery, was not an abuse of discretion, particularly in light of the potential danger that the jury would view defendant's financial status as a wellspring of compensation for damages rather than for the limited proffered purpose of showing the repair record of the premises. At trial, plaintiff was able to avail herself of other avenues of inquiry concerning the state of repair of the porch railing at the time of the accident, without the need to introduce the financial information as an exhibit. Accordingly, we are not persuaded that the trial court abused its discretion in denying admission of the documents at issue.

Because we conclude that plaintiff has not established error requiring reversal, defendant's cross appeal is moot.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald J. Holbrook, Jr.
/s/ Richard Allen Griffin